

TO THE HOUSE OF REPRESENTATIVES:

The Committee on General, Housing and Military Affairs to which was referred Senate Bill No. 222 entitled "An act relating to recognition of Abenaki tribes" respectfully reports that it has considered the same and recommends that the House propose to the Senate that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds the following:

(1) State recognition will confer official acknowledgment of the longstanding existence in Vermont of Native American Indians who long predated European settlement.

(2) State recognition of Vermont's Native American Indian tribes and bands will increase their dignity and pride in their ancient culture and community and may give them the official status to access federal resources for culture and language preservation, social services, education, and other potential benefits.

(3) State recognition will also bestow the economic development benefit to permit them to market their arts and crafts as authentic Indian products as required by the Indian Arts and Crafts Board (IACB) of the Bureau of Indian Affairs.

(4) In May 2006, the general assembly passed S.117, Act No. 125, in an effort to recognize the Missisquoi Abenaki people and create a Vermont Commission on Native American Affairs. The act failed to comport with the recognition requirements of the IACB, so Vermont Native Americans were unable to market their arts and crafts as authentic Indian works.

(5) According to a public affairs specialist from the U.S. Bureau of Indian Affairs (BIA) state recognition of Indian tribes plays a very small role in regard to federal recognition. The only exception is when a state recognized a tribe before 1900.

(6) At least fifteen other states have recognized their resident native people as Native American Indian Tribes, without any of those tribes previously or subsequently acquiring federal recognition.

(7) Members of any state recognize Native American Indian tribe or band would remain subject to all laws of the state just like any other citizen or resident.

(8) State recognition of Vermont Native American Indian tribes and bands will not provide them with the authority to establish or promote any form of gambling, nor the basis for any right or claim to an interest in land or real estate in Vermont.

Sec. 2. 1 V.S.A. § 852 is amended to read:

§ 852. VERMONT COMMISSION ON NATIVE AMERICAN AFFAIRS  
ESTABLISHED; AUTHORITY

(a) In order to recognize the historic and cultural contributions of Native Americans to Vermont, to protect and strengthen their heritage, and to address their needs in state policy, programs, and actions, there is hereby established the Vermont commission on Native American affairs (the “commission”).

(b) The commission shall ~~comprise seven~~ be composed of nine members appointed by the governor for staggered two-year terms from a list of candidates compiled by the division for historic preservation. ~~The governor shall appoint a chair from among the members of the commission.~~ A member may serve for no more than two terms. The division shall compile a list of candidates’ ~~recommendations from the following:~~

(1) ~~Recommendations from the Missisquoi Abenaki and other Abenaki and other~~ recommended by Native American tribal councils regional and communities organizations in Vermont and requested by individuals who apply to the division, provided the individuals on the list are residents of Vermont and are of documented Native American ancestry. The division shall endeavor to include individuals who represent a wide diversity of affiliations and geographic locations in the state.

~~(2) Applicants who apply in response to solicitations, publications, and website notification by the division of historical preservation.~~

~~(c) The commission shall have the authority to assist Native American tribal councils, organizations, and individuals to:~~

~~(1) Elect a chair who may serve for no more than four years.~~

~~(2) Participate in protecting unmarked burials and sacred sites and to designate repatriation of remains, when ancestry cannot be determined.~~

~~(3) Establish petition procedures for Vermont Native American groups seeking state recognition as a tribe or band.~~

~~(3) Review petitions and the documentation for state recognition.~~

~~(4) Create a three member panel to review each petition for state recognition and the accompanying documentation to determine compliance with the criteria for recognition set forth in section 823 of this title. The members of the review panel shall be appointed from a list of professionals and academic scholars expert in cultural and physical anthropology, Indian law, archeology, Native American Indian genealogy and history and other areas of Native American expertise. The composition of the review panel shall be determined cooperatively between the applicant and the commission. No member of the review panel may be affiliated with or on the tribal roles of the applicant.~~

(5) If the commission agrees with a recommendation of review panel that an applicant has complied with the recognition criteria and is recognition is recommended, the commission shall file a petition with the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs that the applicant be recognized as a Vermont Native American tribe or band. No member of the commission who is a member of the applicant group is may participate in any action regarding the application.

(6) Assist Native American Indian tribes recognized by the state to:

(A) Secure assistance for social services, education, employment opportunities, health care, and housing ,and census information.

(B) Develop and market Vermont Native American fine and performing arts, craftwork, and cultural events in and outside Vermont.

~~(2) Permit the creation, display, and sale of Native American arts and crafts and legally to label them as Indian or Native American produced as provided in 18 U.S.C. § 1159(c)(3)(B) and 25 U.S.C. § 305e(d)(3)(B)~~

~~(3) Receive assistance and support from the federal Indian Arts and Crafts Board, as provided in 25 U.S.C. § 305 et seq.~~

~~(4) Become eligible for federal assistance with educational, housing, and cultural opportunities.~~

~~(5) Establish and continue programs offered through the U.S. Department of Education Office on Indian Education pursuant to Title VII of the Elementary and Secondary Education Act established in 1972 to support educational and cultural efforts of tribal entities that have been either state or federally recognized.~~

(4) Develop policies and programs to benefit Vermont's Native American population.

(d) The commission shall meet at least three times a year and at any other times at the request of the chair. The division of historic preservation of the agency of commerce and community development ~~and the department of education~~ shall provide administrative support to the commission.

(e) The commission may seek and receive funding from state, federal, and other sources to assist with its work.

Sec. 3. 1 V.S.A. § 853 is amended to read:

§ 853. CRITERIA AND PROCEDURE FOR RECOGNITION OF ABENAKI

PEOPLE NATIVE AMERICAN INDIAN TRIBES AND BANDS

~~(a) The state of Vermont recognizes the Abenaki people and recognizes all Native American people who reside in Vermont as a minority population.~~

~~(b) Recognition of the Native American or Abenaki people provided in subsection (a) of this section shall be for the sole purposes specified in subsection 852(e) of this title and shall not be interpreted to provide any Native~~

~~American or Abenaki person with any other special rights or privileges that the state does not confer on or grant to other state residents.~~

~~(c) This chapter shall not be construed to recognize, create, extend, or form the basis of any right or claim to land or real estate in Vermont for the Abenaki people or any Abenaki individual and shall be construed to confer only those rights specifically described in this chapter.~~

(a) For the purposes of this section:

(1) “Applicant” means a group seeking formal state recognition as a Native American tribe or band.

(2) “Band” means an assembly of individuals with different characteristics, that do not denote a separate ethnic and cultural heritage today and who are governed by a tribal council and governmental authority unique to Native American Indians. A band may be recognized provided if it complies with the criteria under subsection (b) of this section and clearly establishes that it has functioned continuously for the past 100 years to the present as an autonomous tribal entity even though it may have been regarded as part of or having been associated with an acknowledged Vermont Indian tribe. No band or group that has formed after January 1, 2008 may be granted state recognition as a tribe.

(3) “Commission” means the Vermont commission on Native American affairs.

(4) “Tribe” means an assembly of Native American people comprising numerous families, clans, or generations and their descendants related by blood and kinship who have a common character, interest, and behavior denoting a separate ethnic and cultural heritage, and who have existed as a community on a substantially continuous basis for 100 years, and the kinship group has historically maintained influence and authority over its members.

(5) “Recognized” means acknowledged as a Native American tribe or band by the general assembly.

(b) An applicant for state recognition as a tribe must meet criteria (1) – (8) which may be supplemented with documentation pursuant to subdivisions (9) and (10) of the following:

(1) The applicant has its headquarters in Vermont and is indigenous to this state based on documentation of tribal organization or government and tribal rolls, or both for a minimum of five years.

(2) Demonstrated historical presence in the state for the past 100 years.

(3) The applicant is organized for the following purposes:

(A) To preserve, document, and promote their Native American culture and history and this purpose is reflected in their by-laws.

(B) To address the spiritual, social, economic, or cultural needs of the tribal members with ongoing educational programs and activities that preserve, document, and promote their Native American culture and history.



(4) Claims shall be supported by official records including birth certificates, church records, school records, U.S. Bureau of the Census records, and other related documents.

(5) Documented kinship relationships with other Indian tribes in and outside Vermont.

(6) Anthropological or historical accounts, or both, that document the applicant's history.

(7) A minimum of 50 living descendants over the age of 18 whose Native American lineage is documented by lineal genealogy and their names and resident locations are documented on the tribal roles of the applicant.

(8) Documented traditions, customs, legends, and other indices of culture that demonstrate the applicant's Native American heritage.

(9) Letters, statements, and documents from state or federal authorities that document the applicant's history of tribal related business and activities that address the Native American Indian culture.

(10) Letters, statements, and documents from tribes in and outside Vermont that attest to the Native American Indian heritage of the applicant.

(c) An applicant for state recognition as a band must meet criteria (1) – (5) which may be supplemented with documentation pursuant to subdivisions (6) of the following:

(1) The applicant has its headquarters in Vermont and is indigenous to the state.

(2) The applicant has been assembled as a band for a minimum of three years and meets all the characteristic of a band pursuant to subdivision (a)(2) of this section.

(3) The applicant is organized for the purpose of preserving, documenting, and promoting Native American Indian culture and history, and this purpose is reflected in its bylaws.

(4) The applicant exists to meet the spiritual, social, economic, or cultural needs of Native American Indian people through a continuous series of educational programs and activities that preserve, document, and promote the Native American Indian culture and history.

(5) The claims are supported by official records such as birth certificates, church records, school records, U.S. Bureau of the Census records, or other pertinent documents.

(6) Letters, statements, and documents from state or federal authorities that document a history of tribal related business and activities that specifically address Native American Indian culture, preservation and affairs.

(d) An applicant may file a petition for recognition with the commission pursuant to subsection (b) or (c) of this section. The commission shall develop procedures, which shall include at least the following:

(1) Time frames for notification to applicant of receipt of the petition and all supporting documentation and appointment of a three-member review panel.

(2) Thorough review of the petition and supporting documents to determine compliance with appropriate recognition criteria shall be completed within a year.

(3) After review is completed the review panel shall issue a detailed recommendation regarding recognition to the commission and the applicant.

(3) If a majority of the members of the commission approve the petition, based on the recommendation of the review panel, the commission shall petition the general assembly to recognize the applicant as a band or tribe.

(4) An applicant that has been denied recognition may not file another petition for 12 months.

(d) Native American Indian tribes recognized by the state of Vermont may freely practice their traditional culture, arts, language, and religion without interference, provided there is no violation of law.

(e) All petitions and supporting documents related to recognition of any Vermont Native American tribe shall be maintained by the division of historic preservation and shall be confidential and available only to members of the commission and recognition review panel personnel.

(f) Vermont Native American Indian bands, tribes, and individual members of those tribes and bands whether recognized or not remain subject to all the laws of the state to the same extent as any other resident or individual.

Recognition does not confer any basis, right or authority to:

- (1) Establish, advance, or promote any form of gambling in this state
- (2) Claim any interest in land or real estate in this state.

Sec. 4. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

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(39) records held by the agency of human services or the department of banking, insurance, securities, and health care administration, which include prescription information containing patient-identifiable data, that could be used to identify a patient;

(40) records and documents submitted by applicants for recognition pursuant to section 853 of this title.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

and that the bill title be amended to read: “An act relating to state recognition of Native American Indian tribes and bands in Vermont”

(Committee vote: \_\_\_\_\_)

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Representative [surname]

FOR THE COMMITTEE